Fair Work Commission

Award Review 2014

AM2014/28

SDA submission regarding substantive claims in the Pharmacy Industry Award

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Submitted by: Julia Fox
National Assistant Secretary
SDA National Office
Level 6
53 Queen Street
MELBOURNE VIC 3000

Telephone: (03) 8611 7000

Email: julia@sda.org.au

1. The SDA provides the following submissions as per the directions issued by Vice President Hatcher during the Full Bench hearing in relation to the SDA substantive claims regarding the Pharmacy Industry Award on 31 March 2017, as per PN136 of transcript.

2. The SDA makes these submissions in response to the written submissions in reply filed by the Australian Business Industrial and New South Wales Business Chamber on 30 March 2017 and in response to additional written submissions filed by the Guild on 7 April 2017.

Submission in response to ABI/NSWBC

3. The first issue raised by the ABI and NSWBC is that the SDA has mischaracterised the proposed variations. In section 2 of their submission the ABI and NSWBC purports that the proposed variations sought are substantive in nature which must be supported by submissions and probative evidence.

4. The SDA disagrees with the submissions of the ABI and NSWBC. The SDA submits that the variations sought are uncontroversial, simple and self-evident and can be determined with little formality. We have addressed the legislative framework and we have provided a merits based argument in support of the variation we are seeking which is what is required for a variation of this nature as part of the Award Review.

5. The Preliminary Jurisdictional decision provided detailed guidance about the conduct of the 4 yearly review and related jurisdictional issues. At [23] the Full Bench stated (emphasis added):[1]

> *The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s.134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI's submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.*
>
> [emphasis added]

[1] [2014] FWCFB 1788 at [23]

6. The SDA submits that the inclusion of a minimum shift and terms of engagement for full-time employees is necessary to meet the modern awards objective and resolves an anomaly and incongruity in the current award.

7. Section 4 of the ABI and NSWBC submissions discusses the merits of the application. The ABI and NSWBC submits that the variations are unnecessary due to the adequacy of the current Award provisions relating to full time employees. They submit that the following clauses in the Award are adequate and numerous which interact to ensure 'free for all' rostering of full-time employees does not occur:

    - Clause 10 which requires an employer to inform the employee whether they are full-time, part-time or casual.

    - Clause 11 which requires a full-time employee to work an average of 38 hours per week

    - Clause 25 which deals with hours of work and how they are arranged.

8. The SDA submits that while these clauses provide some protection for a full-time employee with respect to rostering it does not provide a minimum shift requirement nor does it provide an agreement at the time of engagement on a regular pattern of hours or roster and how that roster can be varied.

9. Section 5 of the ABI and NSWBC submission dealt with the SDA claim for a minimum shift for full-time employees. Paragraph 5.2 of the submission states that because part-time and casual employees work less hours than full-time employees this justifies the inclusion of a minimum engagement for those employees, which is not required for full-time employees.

10. The SDA submits that working less hours does not justify the inclusion of a minimum shift to apply exclusively to part-time and casual employees. We submit that the principal of providing a minimum shift is appropriate for all employees.

11. At paragraph 5.3 of their submission the ABI and NSWBC states that the combination of the rostering provisions at clause 25 of the Award and the requirement to inform the employee they are full-time and will work a guaranteed average of 38 hours per week is an adequate safety net for full-time employees. The SDA submits that the existing provisions are not an adequate safety net as they do not prescribe a minimum shift provision or the establishment of a regular pattern of work agreed to on commencement or how that agreement can be varied.

12. The ABI and NSWBC submit, at paragraph 5.7, that the likelihood of working any more than one short shift in a roster is minimal. The SDA submits that this cannot be asserted. Clause 25.2(b) of the Award permits employees to work up to 12 ordinary hours per day. For a full-time employee, this for example, could mean a roster working three 12 hour days and two 1 hour days to make up 38 hours per week.

13. Section 6 of the ABI submission deals with the SDA claim for engagement provisions and roster variations for full-time employees.

14. The ABI and NSWBC refers to the decision of the Full Bench in *Telum Civil (Qld) Pty Ltd v CFMEU*[2] which they submit provided that the nature of casual employment should be determined with reference to the requirements in the applicable enterprise agreement or modern award. The ABI and NSWBC state that the correct method for determining whether an employee covered by the Pharmacy Industry Award is full-time, part-time or casual will be to have regard to its terms and for this award an employee is full-time by virtue of the fact they are engaged to work an average of 38 hours per week.

15. The SDA in its submission[3] on 17 February 2017 stated:

> *40. The SDA submits that without a regular pattern of work a full-time employee under the Award can, in effect, be treated like a casual employee with a minimum of 38 hours per week or 76 hours averaged over 2 weeks. The SDA submits that this should not be the intention of the Award and this would not meet the modern awards objective of providing a fair and relevant safety net for full-time employees.*

16. Our submission was not that a full-time employee could be defined as a casual but that in the absence of a provision prescribing how hours are set and varied they can be treated like a casual employee.

17. The ABI and NSWBC submit, at paragraph 6.6 that clause 8.2 of the Award does not require that an employee agree to any changes to rosters or hours of work; merely that an employer must consult with the employee in relation to <u>those changes</u>.

18. What 'changes' would an employer consult with the employee in relation to if there is no prescription as to the establishment of hours in the first place? The absence of a provision for agreement between an employer and employee regarding the establishment of regular

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[2] [2013] FWCFB 2434

[3] AM2014/209 SDA Submission – Claim regarding full-time employment in the Pharmacy Industry Award, 17 February 2017, PN 40.

working hours and a roster at the time of engagement and the terms on which the agreement can be varied renders the requirements set out in clause 8.2 Consultation about changes to rosters or hours of work unavailable for full-time employees.

19. PN 68 of the Full Bench Decision[4] contemplates the definition of 'regular roster' and concludes that:

> No definition of regular roster is suggested in s145A and given we are dealing with a model clause it would be problematic to construct a definition that would meet the diverse circumstances of all modern awards: This issue can be further considered in the context of the 4-yearly review.

20. The SDA submits that the claim we are making in relation to the inclusion of provisions for the establishment of a regular pattern of work or roster and how that can be varied is necessary to ensure that clause 8.2 applies to full-time employees who should be afforded the same protections as part-time employees for stable and regular hours of work.

21. The SDA submits that the variation sought provides clarity, simplicity and certainty around an employee's pattern of work hours which is of benefit to both employees and employers.

[4] [2013] FWCFB 10165

Submission in response to submissions filed by the Pharmacy Guild of Australia

22. During the hearing on 31 March 2017 the Guild stated that:

> PN104 *In our view**, you can't say that there is an anomaly in circumstances where the bench has considered whether those provisions are required to make a fair and relevant safety net** with respect to some employees and have ultimately determined not to include them for other employees.*
>
> PN105 *VICE PRESIDENT HATCHER: Is there any express consideration or is that just derived from the modern award which emerged from the process?*
>
> PN106 *MS LIGHT: I don't have the pre-modern decision making the award in front of me, but **unfortunately in the making of this award there was a significant debate as to whether the Pharmacy Award should be rolled into General Retail and much of the contention between the parties and the consideration of the bench went to that issue.** If it would assist the bench, we can locate those materials and look to whether it was specifically considered, and seek leave to file some short written submissions in relation to that matter. [emphasis added]*

23. Vice President Hatcher directed the Guild to file written submissions in relation to consideration of engagement and notification of rostering provisions during the award modernisation process.

24. The SDA makes these submissions in response to the written submissions filed by the Guild on 7 April 2017, as directed by Vice President Hatcher during the hearing on 31 March 2017.

25. In its submission, the Guild refers to the SDA submissions in July 2008 and the SDA draft General Retail Award and the comparative Award provided by the Guild:

> *In July 2008 the SDA made submissions (enclosed) in relation to a proposed retail award covering community pharmacy which at page [9] relevantly states:*
>
> > *"Full-time is self-explanatory, being a person working an average of 38 hours a week. Part-time employment reflects the approach adopted by the Australian Industrial Relations Commission in the award simplification of the Victorian Shops Award in which case a set of criteria were clearly articulated as being he parameters for defining a part-time employee."*
>
> *Accompanying these submissions was the SDA draft General Retail Award (enclosed) which at clauses 14.2 and 14.3 contains provisions for full-time and part-time employees which largely reflect those presently found in the PIA.*
>
> *By comparison, the Guild's draft modern award (enclosed) at clause 6.3 set out a terms of engagement clause which applied to all employees engaged under the Award.*

26. Clause 14.2 of the draft relates to full-time employees and is broader than what is contained in the Pharmacy Industry Award:

> **14.2 Full-time employees**
>
> A full-time employee is an employee who is engaged to work an average of 38 hours per week.
>
> The minimum daily engagement is 4 hours.

27. While the Guild has made reference to clause 14 it has failed to include in its submission Clause 48 of the SDA draft, the 38 hour week rosters clause, which relevantly contains numerous provisions regarding the rostering of full-time employees, including notification of rosters at clause 48.14:

> **48. 38 HOUR WEEK ROSTERS**
>
> 48.1 A fulltime employee shall be rostered for an average of 38 hours per week, worked in any of the following forms:
>
> 48.1.1 38 hours in one week;
>
> 48.1.2 76 hours in two consecutive weeks;
>
> 48.1.3 114 hours in three consecutive weeks; or
>
> 48.1.4 152 hours in four consecutive weeks.
>
> 48.2 The 38 hour week may be worked in any one of the following methods:
>
> 48.2.1 shorter days, that is 7.6 hours;
>
> 48.2.2 a shorter day or days each working week;
>
> 48.2.3 a shorter fortnight, i.e. four hours off in addition to the rostered day off;
>
> 48.2.4 a fixed day off in a four-week cycle;
>
> 48.2.5 a rotating day off in a four-week cycle;
>
> 48.2.6 an accumulating day off in a four week cycle, with a maximum of five days being accumulated in five cycles.
>
> 48.3 In each shop, an assessment shall be made as to which method best suits the business and the proposal shall be discussed with the employees concerned, the objective being to reach agreement on the

method of implementation. An assessment may be initiated by either the employer or employees not more than once a year.

48.4 Circumstances may arise where different methods of implementation of a 38 hour week apply to various groups or sections of employees in the shop or establishment concerned.

48.5 In retail establishments employing on a regular basis 15 or more employees per week, unless specific agreement exists to the contrary between an employer and an employee, the employee shall not be required to work ordinary hours on more than 19 days in each 4 week cycle.

48.5.1 Where specific agreement exists between an employer and employee, the employee may be worked on the basis of:

48.5.1.1 not more than 4 hours' work on one day in each two week cycle.

48.5.1.2 not more than 6 hours' work on one day in each week.

48.5.1.3 not more than 7.6 hours' work on any day.

48.7 Substitute RDO's

48.7.1 An employer, with the agreement of the majority of employees concerned, may substitute the day or half day an employee is to take off in accordance with 47.2.3, 47.2.4 and 47.2.5, for another day or half day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the business in the event of rush orders or some other emergency situation.

48.7.2 By agreement between an employer and an employee, another day may be substituted for the day that employee is to be rostered off.

48.8 Accumulation of RDO's

By agreement between the employer and a worker, the rostered day off may be accumulated up to a maximum of five days in any one year. Such accumulated periods may be taken at times mutually convenient to the employer and the worker.

48.9 A roster period cannot exceed 4 weeks.

48.10 Ordinary hours must be worked on not more than 5 days in each week, provided that if ordinary hours are worked on 6 days in one week, ordinary hours in the following week must be worked on no more than 4 days.

48.11 Ordinary hours must be worked so as to provide an employee with 2 consecutive days off each week or 3 consecutive days off in a 2 week period.

This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be

recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.

An employee can terminate the agreement by giving 4 weeks notice to the employer.

48.12 Ordinary hours and any reasonable additional hours may not be worked over more than 6 consecutive days

48.13 An employee who regularly works Sundays must be rostered so as to have 3 consecutive days off each 4 weeks and the consecutive days off must include Saturday and Sunday.

This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.

An employee can terminate the agreement by giving 4 weeks notice to the employer.

48.14 Notification of rosters

48.14.1 The employer must exhibit staff rosters on a notice board, which must show for each employee:

- the number of ordinary hours to be worked each week;
- the days of the week on which work is to be performed; and
- the commencing and ceasing time of work for each day of the week.

48.15 The employer shall retain superseded notices for twelve months. The roster shall, on request, be produced for inspection by an authorised person.

48.16 Due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.

48.17 Any permanent roster change must be provided to the employee in writing with a minimum 7 days notice. Should the employee disagree with the roster change, they shall be given a minimum of 14 days written notice in lieu of 7 days, during which time there shall be discussions aimed at resolving the matter in accordance with clause XX - Dispute Settlement Procedure, of this award.

48.18 Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the employee because of the change of roster shall be paid at the overtime rate of pay.

48.19 An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee shall be entitled to such penalty, loading or benefit as if the roster had not been changed.

28. As provided in our submissions in July 2008[5]:

> *The initial position of the SDA was that there should be several separate awards that would operate across different sectors of the retail industry, namely a general Retail Award, a Community Pharmacy Award, a Fast Food Industry Award and a Hair and Beauty Industry Award. However, the Award Modernisation Full Bench of the Australian Industrial Relations Commission has decided that the Retail Industry is to include fast food, community pharmacy and hair and beauty. On this basis, the SDA has prepared a retail award which will provide comprehensive coverage of all sectors of the retail industry, including community pharmacy, fast food and hair and beauty, as well as general retail.*
>
> [emphasis added]

29. As a result, the SDA prepared a draft modern retail Award to cover all of those sectors identified by the Full Bench decision. In our submission in July 2008 we characterised the draft in the following terms:

> *In fact, it appears that in order to create a modern award for Australia's retail industry, which results in a single set of classifications, wages and conditions of employment for the entire retail industry, that some workers will be disadvantaged and some employers will have their costs increased. The SDA is of the view that the intentions in paragraphs 2(c) and (d) of the Ministerial request could only be achieved if time was given so as to enable the SDA, the Commission, and the employers, to cost out a proposed modern award against each roster system, type of employment, classification structure, operating in each and every retail establishment, in each and every State and Territory. This is clearly an impossible task and would never be undertaken.*
>
> *The SDA has formed the view that it would be possible to meet the intentions in paragraphs 2 (c) and (d) of the Ministerial request only by compiling a modern award which contained each and every provision of each and every existing federal award and NAPSA relevant to the retail industry.*
>
> *Again, such a process is both impossible and self-defeating in the sense of trying to create a simple to understand and easy to apply award.*

[5] AM2018/10 – Submission by SDA July 2008, page 1.

As the intentions expressed in paragraphs 2(c) and (d) of the Ministerial request are effectively impossible to meet on face value, then the SDA has adopted the approach that a pragmatic construction of a modern award is required which will have the effect of actually creating disadvantage to groups of employees and creating increased costs for groups of employers.

The SDA has approached the task of preparing a modern award for the retail industry on the basis of not cherry picking the best for workers out of each and every federal award and NAPSA, but rather, on the basis of creating a pragmatic, practical and fair minimum set of conditions. This can only be achieved by deliberately removing some good conditions in some States and deliberately improving some poorer conditions in other States.

*The aim of the SDA has been to create a modern retail award which, as from the **1st January 2015**, would be able to apply universally across the entire retail industry and across all sectors of the retail industry, and which would operate fairly effectively, be simple to use and would at that stage be universally accepted as being a good, sound, modern award.*

30. The SDA sought to draft an Award which would attempt to provide a fair and relevant safety net for all sectors of retail, including Community Pharmacy which contained provisions setting out the rostering principles to apply to full-time employees, including notification of rosters and how they are to be varied.

31. While the provisions contained in clause 48 of the SDA draft General Retail Industry Award was not included in the Pharmacy Industry Award these provisions were contained in the modern General Retail Industry Award 2010. The notification of rosters clause is in almost identical terms to that provided in the SDA draft Award.

32. In its decision, the Full Bench[6] decided to make separate Awards for Retail, Community Pharmacy, Fast Food and Hair and Beauty. The decision simply went to the question of scope and separating the Awards, not to the issue of what should be contained in each Exposure Draft:

> ***[282]*** *The issue of the scope of the retail award raises important considerations concerning the objectives of award modernisation. The objective of reducing the number of awards applying in an industry carries with it the objective of rationalising disparate terms and conditions so that the resultant safety net is more uniform, consistent and fair. However, it is also evident that there are wide variations in terms and conditions in safety net awards and NAPSAs in the retail industry.*

[6] [2008] AIRCFB 1000

> ***[283]*** *The more awards with disparate provisions are aggregated the greater the extent of changes in the safety net. Changes may be able to be accommodated by a "swings and roundabouts" approach, specific provisions relevant to part of the industry or transitional provisions. However, significant changes may also result in net disadvantage to employees and/or increased costs for employers. The publication of an exposure draft which sought to rationalise the terms and conditions across the various types of retail establishment provided a means whereby the impact of such an approach could be fully evaluated.*
>
> ***[284]*** *We have considered these matters and the submissions of the parties and* ***have decided to make separate awards for general retailing, fast food, hair and beauty, and community pharmacies.*** *Further, we will exclude stand alone meat retailing and, at this stage, stand alone nurseries from the general retail award to enable those types of operations to be considered as part of the meat and agriculture industries respectively. The position regarding real estate agencies and motor vehicle related retailing will also be considered in subsequent stages.*
>
> ***[285]*** *In reaching this decision we have placed significant reliance on the objective of not disadvantaging employees or leading to additional costs. We note that such an approach will not lead to additional awards applying to a particular employer or employee.*
>
> ***286]*** *The contents of the four awards we publish with this decision are derived from the existing awards and NAPSAs applying to the different sectors. Although the scope of the awards is obviously reduced, this did not eliminate the variations in terms and conditions within each part of the industry. We have generally followed the main federal industry awards where possible and had regard to all other applicable instruments. In this regard we note in particular the significant differences in awards and NAPSAs applying to the fast food and pharmacy parts of the industry.*

33. The decision noted that '*We have revised these provisions having regard to the terms, incidence and application of relevant instruments for each sector. The result is provisions which more closely approximate to existing instruments for the relevant parts of the industry but which adopt different standards from one part to another.'*

34. As demonstrated in our submission on 17 February 2017 the establishment of a roster or regular pattern of hours for full-time employees was a common feature of the relevant state Awards and NAPSA's. The Exposure Draft published by the FWC, however, failed to include such provisions. There is little evidence that this was agitated or considered during the subsequent proceedings and the Pharmacy Industry Award 2010 was made with little change to the draft published.

35. The Guild also made reference to submissions made by the SDA in August 2008:

> In its submissions in reply to the Guild's draft modern award dated August 2008 (**enclosed**) the SDA made the comment that in the absence of the Guild proposing pay rates in its award, it was not possible for the SDA to comment on whether or not the hours of work, casual loadings, penalties or other conditions in the Guild proposed award constituted a fair minimum safety net for employees. The SDA did however submit as follows:

"The approach of the SDA has been to use the entire resources of the union to put together a Modern Award for the entire Retail Industry which provides a fair and effective safety net of wages and conditions of employment.

The SDA's resources include:

- *our comprehensive knowledge of the history of federal and State awards given our pivotal role in retail, takeaway food, community pharmacy and hair and beauty awards,*
- *our first hand experience and in depth knowledge and understanding of the ways in which employers have used and abused various award provisions,*
- *our understanding of the practical needs of employees and employers across the whole of retail industry (in its broadest sense), and*
- *our appreciation of the requirements (both statutorily and pragmatically) of the Award Modernisation process.*

The SDA has utilised these resources through engaging in a comprehensive internal discussion involving 3 full day meetings of National Officers, Branch Secretaries, National and Branch Industrial Officers, together with the preparation of internal drafts of a Modern Award and extensive online discussion across the union about the contents of the SDA Modern Award.

The Commission can have confidence in the SDA's Modern Award for the entire Retail Industry."

36. The preceding paragraph of the SDA submissions explained the context of the SDA's approach to providing our draft Award:

> *The SDA does not invite the Commission to engage in a detailed forensic examination of the contents of each award and NAPSA together with the history of each award and NAPSA and together with an examination of the way in which each award and NAPSA is used (or abused) in practice.*
>
> *Such an examination could not properly be done in the remaining timeframe given that the Commission has not allowed more time for the parties to all awards and NAPSA's engage with the Commission over such a forensic examination and that this has been influenced by the timeframe and workload imposed on the Commission by the Act and the Ministerial Request.*
>
> [emphasis added]

37. The SDA made the submissions and provided the draft Award in light of the limitations explained in these preceding remarks.

38. The SDA submits that the Guild has not advanced any evidence that express consideration was given during the award modernisation process regarding the engagement provisions for full-time employees or provisions which require the establishment of a regular pattern of employment or roster and how that roster may be varied.

39. During the hearing on 31 March 2017 Vice President Hatcher asked whether the General Retail Industry Award 2010 (GRIA) contains a notification of roster clause, at PN 130 of transcript. The SDA would like to clarify that the GRIA does contain notification of rostering provisions for full-time employees at clause 28.14:

> **28.14 Notification of rosters**
> **(a)** The employer will exhibit staff rosters on a notice board, which will show for each employee:
> **(i)** the number of ordinary hours to be worked each week;
> **(ii)** the days of the week on which work is to be performed; and
> **(iii)** the commencing and ceasing time of work for each day of the week.
>
> **(b)** The employer will retain superseded notices for twelve months. The roster will, on request, be produced for inspection by an authorised person.
>
> **(c)** Due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.
>
> **(d)** Any permanent roster change will be provided to the employee in writing with a minimum seven days notice. Should the employee disagree with the roster change, they will be given a minimum of 14 days written notice instead of seven days, during which time there will be discussions aimed at resolving the matter in accordance with clause 9—Dispute resolution, of this award.
>
> **(e)** Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the employee because of the change of roster will be paid at the overtime rate of pay.
>
> **(f)** An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee will be entitled to such penalty, loading or benefit as if the roster had not been changed.

40. However, the Award does not contain provision for terms on engagement such as the part-time provisions in the Pharmacy Industry Award, which is one of the claims being made by the SDA as part of the 4-yearly review of the GRIA.

41. In its submission, the Guild restates its opposition to the inclusion of terms of engagement provisions but considers it appropriate to include a rostering provision which requires advance publication of rosters. The Guild has proposed the following clause for insertion in the Pharmacy Industry Award 2010:

> *"**xx Notification of rosters***

(a) The employer will exhibit staff rosters on a notice board at least 2 weeks in advance, which will show for each employee:

(i) the number of ordinary hours to be worked each week;
(ii) the days of the week on which work is to be performed; and
(iii) the commencing and ceasing time of work for each day of the week.

(b) The employer will retain superseded notices for twelve months. The roster will, on request,be produced for inspection by an authorised person.

(c) Due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.

(d) Any permanent roster change will be provided to the employee in writing with a minimum seven days' notice. Should the employee disagree with the roster change, they will be given a minimum of 14 days written notice instead of seven days, during which time there will be discussions aimed at resolving the matter in accordance with clause x—Dispute resolution, of this award."

41. While the SDA continues to pursue terms of engagement provisions for full-time employees, as per our draft determination we agree that the Award should include a notification of rosters provision. The SDA included notification of roster provisions in our draft Award as part of the award modernisation process, as demonstrated above, and submit that the inclusion of such a term is necessary to provide a fair and relevant safety net.

42. The SDA, however, submits that the clause proposed by the Guild should be consistent with the notification of rosters clause which was considered by the Full Bench during award modernisation and included in the General Retail Industry Award 2010.

43. The Guild proposal is consistent with the GRIA but is missing two fundamental sub-clauses, 28.14(e) and 28.14(f):

(e) *Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the employee because of the change of roster will be paid at the overtime rate of pay.*

(f) *An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee will be entitled to such penalty, loading or benefit as if the roster had not been changed.*

44. The SDA submits that these sub-clauses are necessary to provide a fair and relevant safety-net for employees. The inclusion of these sub-clauses have been deemed appropriate by a Full Bench of the Fair Work Commission in the making of the GRIA.

45. Sub-clause 28.14(e) prescribes when overtime applies to a one off change in roster resulting in an employee working extra hours. This is necessary to ensure that employees are paid at the overtime rate for extra work resulting in a one off roster change.

46. Sub-clause 28.14(f) is a fundamental clause which is included to ensure that changes to rosters are not done to avoid other entitlements prescribed in the Award. This is a common and necessary protection for employees and is fundamental to providing a fair and relevant safety net.

47. The SDA supports the inclusion of a notification of rosters clause. As provided in our previous submissions this was a common feature of pre-modern Awards, it was not fully considered in the modernisation of the Award and the inclusion of such a clause meets the modern awards objective of providing a fair and relevant safety net.

48. The SDA submits that the Pharmacy Industry Award 2010 should be varied to include a notification of rosters clause in the following terms:

> *"**xx Notification of rosters***
>
> *(a) The employer will exhibit staff rosters on a notice board at least 2 weeks in advance, which will show for each employee:*
>
> *(i) the number of ordinary hours to be worked each week;*
> *(ii) the days of the week on which work is to be performed; and*
> *(iii) the commencing and ceasing time of work for each day of the week.*
>
> *(b) The employer will retain superseded notices for twelve months. The roster will, on request,be produced for inspection by an authorised person.*
>
> *(c) Due to unexpected operational requirements, an employee's roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.*
>
> *(d) Any permanent roster change will be provided to the employee in writing with a minimum seven days' notice. Should the employee disagree with the roster change, they will be given a minimum of 14 days written notice instead of seven days, during which time there will be discussions aimed at resolving the matter in accordance with clause x—Dispute resolution, of this award."*
>
> ***(e)** Where an employee's roster is changed with the appropriate notice for a once-only event caused by particular circumstances not constituting an emergency, and the roster reverts to the previous pattern in the following week, then extra work done by the employee because of the change of roster will be paid at the overtime rate of pay.*
>
> ***(f)** An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee will be entitled to such penalty, loading or benefit as if the roster had not been changed.*